MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2298 OF 1996

GOPIKISHAN S. DAMANI & ANR. .. PLAINTIFFS

Vs.

SUPREME INDUSTRIES LTD. & ORS.... DEFENDANTS

Mr. A. H. Mukri i/b Purohit & Co. for plaintiff
Ms. Aarti Birje i/b M/s. Khaitan & Jayekar for defendant 1

CORAM: **SMT. RANJANA DESAI, J.**

DATE: SEPTEMBER 14, 2007.

P.C.

. This suit is on my board under the caption "Undefended Suits for ex parte decree". Affidavit of evidence in lieu of examination-in-chief dated 18/7/07 filed by the 1st plaintiff is on record. It is marked "X". Additional affidavit of the 1st plaintiff dated 29/8/07 is on record. It is marked "Y". List of documents along with the compilation of documents is on record and it is marked "Z (Colly.)".

2. Shri Gopikishan Damani, the 1st plaintiff is present in the court. He confirms the averments made in the plaint and in his affidavit. In the additional affidavit dated 29/8/07 it is stated

that the documents mentioned at serial Nos. 3,4 and 5 are the Xerox copies of the transfer deeds lodged with the 1st defendant company by defendants 2,3,4,5 and 6 with respect to 50 shares each. The said Xerox copies were provided by the 1st defendant company to the plaintiffs and the plaintiffs do not have in their custody the original transfer deeds lodged by defendants 2,3,4,5, and 6 with defendant No. 1 company. The 1st plaintiff has, therefore, prayed that the Xerox copies of the said three transfer deeds maybe taken on record as secondary evidence. First defendant is represented by learned counsel Ms. Aarti Birje. The learned counsel states that 1st defendant is supporting the case of the plaintiffs as stated in the plaint and in the supporting affidavits. She stated that original of document at Sr. No. 5 is with the Stock Holding Corporation of India Limited, Vikhroli (Mumbai). She has produced original of transfer deeds at Sr. Nos. 3 and 4. They are marked Exhibits "A" and "B" respectively. The plaintiffs are, permitted to tender Xerox copies of the said three transfer deeds as secondary evidence.

3. The case of the plaintiffs as is evident from

the contents of the plaint and the affidavit of evidence in lieu of examination-in-chief is that the 1st plaintiff is a share and stock broker carrying on business in shares and securities according to the Rules, Bye-laws and Regulations of the Stock Exchange, Bombay. The 2nd plaintiff is the wife of the 1st plaintiff. The 1st defendant company is a public limited company and its shares are listed and traded inter alia at the Stock Exchange, Bombay. Defendants 2 to 6 have illegally and fraudulently acquired 150 shares of the 1st defendant company with the forged transfer deeds and lodged the same for transfer with the 1st defendant.

4. According to the plaintiffs, 1st defendant company announced a right offer of Partly Convertible Debentures and in response to the said right offer the plaintiffs vide application No. 4618 dated 10/7/93 applied for 300 Partly Convertible Debentures and paid a sum of Rs.24,000/- as and by way of application money vide cheque bearing No. 004297 dated 10/7/93 at Bharat Overseas Bank. The said cheque was encashed by the 1st defendant.

5. According to the plaintiffs in pursuance to the said application the 1st defendant allotted to the plaintiffs 300 Partly Convertible Debentures under Folio No. 0005189. The 1st defendant company made a call with respect to the said 300 Partly Convertible Debentures and pursuant thereto the plaintiffs have paid the call amount.

6. The plaintiffs case is that the said 300 Partly Convertible Debentures were converted into 300 equity shares each of Rs.10/- paid up and 300 15% Non Convertible Debentures each of Rs.300/- paid up. The details of the said 300 equity shares of Rs.10/- paid up are mentioned in Exhibit "A" to the plaint.

7. According to the plaintiffs, the 1st defendant company vide its letter bearing reference No. SH/1, dated 1/7/95 informed the 1st plaintiff that transfer for 50 shares comprised in Share Certificate No. 93/CP 010999 corresponding distinctive Nos.9338776/825 purporting to have been executed by the plaintiffs are presented to the 1st defendant company for registration for transfer of the said shares. In the said letter 1st defendant has stated that the signature of the plaintiffs

does not tally with the specimen signature registered with the company and required the plaintiffs to convey to the 1st defendant company within 15 days from the said letter if they have any objection to the said transfer. The original of the said letter is at Serial No. 1 to the List of Original Documents and it is marked Exh.-1.

8. After receipt of the said letter dated 1/7/95 the 1st plaintiff made a search for the said 300 shares and 300 Non-Convertible Debentures, however, the same were not located. The 1st plaintiff is not aware as to when the said 300 shares and 300 Non-Convertible Debentures were lost or misplaced or stolen from his custody.

9. On 13/7/95 Mr. Ramkaran Lohia the representative of the 1st plaintiff personally visited the office of the 1st defendant company, and discussed the matter with the 1st defendant company and requested the 1st defendant company to keep the said transfer in abeyance and also requested to furnish Xerox copies of transfer deed of both sides for further action. The said facts were recorded by the 1st plaintiff in his letter dated 13th July, 1998 addressed to the 1st

defendant company. A copy of the said letter is at Serial No. 2 in the list of original documents. It is marked Exh.- "2".

10. In response to the said letter dated 13/7/95 , the 1st defendant company furnished to the 1st plaintiff Xerox copies of three transfer deeds with respect to 150 shares pertaining to 50 shares bearing distinctive Nos. 9338776/825, corresponding share certificate No. 010999 lodged by defendants 2 and 3 jointly for transfer in their names, 50 shares bearing distinctive nos. 9338/26/775, corresponding share certificate No. 010998 lodged by defendants 4 and 5 jointly for transfer in their names and further 50 shares bearing distinctive Nos. 9338626/675 corresponding share certificate No. 10996, lodged by defendant 6 for transfer in her name. The Xerox copies of the said three deeds are at serial nos. 3,4 and 5 to the list of original documents. They are marked Exh.- "3", "4" & "5" respectively.

11. According to the plaintiffs they have not executed any of the transfer deeds and the signatures of the plaintiffs as appearing on the said transfer deeds are forged and the notarisation

made on the transfer deed is also false and bogus.

12. The plaintiffs vide their advocate's letter dated 11/8/1995 informed the 1st defendant that the said transfer deeds are forged. The plaintiffs also recorded that the plaintiffs have never gone to the Notary and they do not know A. D. Shroff. It is also stated that fraud has been played and the plaintiffs are proceeding in the matter. It was also requested that the 1st defendant company should not transfer and deliver the said shares and also should not transfer the balance 300 shares and 300 Non Convertible Debentures if lodged with the 1st defendant for transfer. A copy of the letter was sent to the Senior Inspector of Police, M.R.A. Marg Police Station for investigation and action. A copy of letter dated 11/8/95 is at serial No. 6 of the list of original documents. It is marked as Exh. "6".

13. According to the plaintiffs till date the said 300 shares are standing in the names of the plaintiffs and the plaintiffs have been receiving dividends with respect to the said 300 shares. The counter folio of dividend warrant with respect to the interim dividend declared for the year

2006-2007 declared on the said 300 shares is at Serial No. 7 to the List of Original Documents. It is marked as Exh. "7".

14. The plaintiffs' case further is that in the year 2006 the 1st defendant company issued bonus shares on the said 300 shares in the ratio of 1:1, and the said 300 bonus shares have been credited to the De-mat account of the plaintiffs, bearing Client ID No. 1201710000000168. A copy of the allotment letter dated 28th December, 2006 is at serial No. 8 to the list of original documents. It is marked as Exh. "8".

15. It is in these circumstances, that the plaintiffs have filed the suit for declaration that the plaintiffs are the owners of the said 300 suit shares more particularly described in Exhibit "A" to the plaint, together with all the benefits accrued thereon and also for a decree against the 1st defendant company thereby ordering the 1st defendant company to issue duplicate shares in lieu of the said 300 shares in the name of the plaintiffs.

16. As already stated, the learned counsel for the

1st defendant is present. She supported the case of the plaintiffs. Defendants 2 to 6 have been served. They are not contesting the suit. They have not filed written statements.

17. In the circumstances, in my opinion, the plaintiffs are entitled to a decree in terms of prayer clause (a) of the plaint. The plaintiffs are also entitled to a decree in terms of prayer clause (b) except the bracketed portion. The suit is, therefore, decreed in terms of prayer clause (a). The suit is also decreed in terms of prayer clause (b) except the bracketed portion. Needless to say that duplicate shares in the name of the plaintiffs will be issued only if the plaintiffs follow the due prescribed procedure.

18. Suit is disposed of.

JUDGE.